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Sentence

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

19 CR 112 (RMB)

10 CR 1160 (RMB)

5 ANDREW MOODY,

6 Defendant.

7 -----x

8 New York, N.Y.

9 October 6, 2021

9:30 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13
14 APPEARANCES

15 AUDREY STRAUSS

16 Acting United States Attorney for the
17 Southern District of New York

ROBERT SOBELMAN

17 Assistant United States Attorney

18 ANTHONY RICCO

19 Attorney for Defendant Moody

20 ALSO PRESENT: DAVINA TUMASAR, USPO

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1 (Case called)

2 THE COURT: I apologize for being late today.

3 So, as you all know, the matter is on for sentencing
4 today for essentially two offenses. One is the substantive
5 offense which has an exaggerating guideline range, and the
6 other is for violating supervised release by committing that
7 crime during supervision.

8 So, it's a really steep and serious matter. I want
9 you to also know that I thought that the papers were excellent
10 on both sides and I read everything and I've reviewed the
11 picture and the letters of support and you know, to me it's a
12 sad situation.

13 Mr. Moody, you come across in the papers as being a
14 loving parent and someone who is upbeat, friendly, and so it's
15 sad for me to see this, and just that. And I was also
16 impressed. I am going to go in more detail in a minute but I
17 read all of those certificates that you got while incarcerated.
18 I don't think I've ever had a defendant with that much interest
19 in different subjects and was so successful while incarcerated.
20 So, that's all a plus. I do think that the origin of your
21 issues probably is obvious. It's a difficult upbringing with
22 both parents having drug problems. But here we are.

23 Anyway, in sentencing as you all know the United
24 States Sentencing Guidelines are no longer mandatory. They
25 haven't been for over ten years. And instead of mandatory

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1 guidelines what the Court does at sentencing is to review or
2 recall the 3553(a) factors. They consist of the nature and the
3 circumstances of the offense or in this case offenses, as well
4 as the history and characteristics of Mr. Moody and they also
5 include the need for sentence imposed to reflect the
6 seriousness of the offense or offenses, to promote respect for
7 the law, to provide just punishment for the offenses, to afford
8 adequate deterrence to criminal conduct, to protect the public
9 from further crimes, to provide the defendant with needed
10 educational or vocational training or medical care or other
11 correctional treatment in the most effective manner.

12 And in doing all that we look at the kinds of
13 sentences available, the kinds of sentences and the sentencing
14 range established in the sentencing guidelines. Here, there is
15 a mandatory minimum drug charge of 120 months. I'll get to
16 that in a moment in more detail.

17 We look at any policy statements that may have been
18 issued by the sentencing commission. We seek to avoid
19 unwarranted sentence disparities among similarly situated
20 defendants, and in appropriate cases I don't think that applies
21 here the need to provide for restitution.

22 Am I right?

23 MR. SOBELMAN: (Nodding).

24 THE COURT: So, we always start with a guidelines
25 analysis even though they are no longer mandatory in this case.

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1 The range is 360 months to life. The offense level is 39. The
2 criminal history category is six and as I say, there is a
3 statutory mandatory minimum sentence of 120 months
4 incarceration.

5 So, when considering the 3553(a) factors, here's what
6 stands out. And this is going to take a while because I've
7 delved into all, the many factors and then some as I thought
8 were relevant.

9 Mr. Moody pled guilty before Magistrate Judge James
10 Cott on October 29, 2019, to a conspiracy to distribute and
11 possess with the intent to distribute cocaine base, heroin and
12 marijuana. He pled guilty pursuant to a plea agreement dated
13 July 29, 2019, in which there was a stipulated guidelines range
14 of 360 months to life imprisonment. I accepted the guilty plea
15 on or about November 12, 2019.

16 I also signed the consent preliminary order of
17 forfeiture on 11/12/2019 in which Mr. Moody agreed to forfeit a
18 sum of money equal to \$100,000 in U.S. currency and \$34,382 in
19 U.S. currency that was seized from his residence on or about
20 June 22, 2018.

21 Probation describes the principle offense as follows:

22 Mr. Moody led a drug trafficking crew that distributed
23 a significant amount of crack, heroin and fentanyl and
24 marijuana in the Bronx. More than ten people worked for
25 Mr. Moody and he directed all aspects of the drug operation.

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1 This is I'm quoting from the presentence investigation
2 report.

3 So, more than ten people worked for Mr. Moody and he
4 directed all aspects of the drug operation including the roles
5 of his workers, what shift they worked, to whom they sold and
6 how much they charged for the narcotics.

7 Mr. Moody maintained premises to package and
8 distribute the narcotics and he possessed firearms to protect
9 his drug business. He also earned a substantial amount of
10 money from drug trafficking and often stored cash proceeds in
11 large garbage bags.

12 At the time of his arrest law enforcement officers
13 recovered 280 grams of crack, distribution quantities of heroin
14 and marijuana, \$34,382 in cash, a defaced .45 caliber
15 semiautomatic firearm and several drug ledgers. That's all
16 quoting from the presentence investigation report.

17 Mr. Moody is 36. He has some high school education.
18 He's unmarried. He has four children and the children live
19 with their respective mothers. According to the presentence
20 report, Mr. Moody's father is a recovered drug addict who is a
21 caterer at his family owned restaurant which is called "The
22 House of Seafood Express".

23 Mr. Moody's mother is drug addicted. Her whereabouts
24 appear to be unknown to Mr. Moody. He was raised primarily by
25 his grandparents in New Jersey and then in Georgia as a result

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1 of his parents' drug addictions.

2 When he was approximately 16 or 17 he spent the summer
3 in New York with his mother and thereafter, stayed and remained
4 in New York. At that time he went to live with his maternal
5 aunt. He would periodically see his another in an attempt to
6 get his mother to attend drug treatment.

7 The presentence report also states that Mr. Moody
8 suffers from diabetes, pain in his foot and sometimes
9 difficulty breathing as a result of gunshot wounds he sustained
10 in the past. He has some prior employment that included
11 working in his family's restaurant, House of Seafood Express,
12 as a cook, working as a delivery person for catering and for
13 the restaurant business and working in the supermarket.

14 He himself has an extensive history of substance abuse
15 according to paragraph 86 of the presentence report. He began
16 smoking marijuana when he was 14. At times he smoked up to six
17 or seven marijuana cigarettes per day. He began using crack
18 cocaine, heroin and ketamine at an early age. Using and
19 abusing these drugs appeared to begin when he was approximately
20 only 14 years of age. He has also used Percocet, oxycontin,
21 Xanax, ecstasy and Molly. He reportedly participated in the
22 drug treatment program at Daytop Village in or about 2016/2017.

23 The probation department says that the instant offense
24 represents his second federal and fifth overall federal
25 construction. He has a prior criminal history that includes

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1 criminal sale of a controlled substance in the fifth degree,
2 unlawful possession of marijuana, criminal possession of a
3 weapon in the fourth degree, assault in the third degree,
4 criminal trespass in the second degree, criminal possession of
5 a controlled substance in the fifth degree -- two convictions
6 there -- trespass, possession of a firearm in relation to a
7 drug trafficking offense under Southern District of New York
8 docket ten CR 1160.

9 He was serving a term of supervised release for
10 possession of a firearm offense under docket 10 CR 1160 at the
11 time of the instant arrest. That supervision was by another
12 Southern District judge. The case, the supervision case was
13 reassigned to me on or about 2/28/19.

14 Counsel, do you recall who had the supervision, who
15 was supervising Mr. Moody?

16 MR. RICCO: It was Judge Caproni.

17 THE COURT: Okay. On 11/12/2019 he pled guilty before
18 me also to violating the terms of his supervision in that he
19 committed a federal crime, namely, the narcotics conspiracy.

20 He has been detained since June 22, 2018 and, of
21 course, he will get credit for time-served.

22 According to the presentence report, Mr. Moody has not
23 incurred any discipline, any disciplinary sanctions during his
24 current incarceration and the presentence report does observe
25 that between February 2019 and October 2019 he participated in

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1 several life kills and educational classes which I referred to
2 before including parenting skills, conflict resolution,
3 business ethics, marketing, sales fundamentals and leading by
4 example, and also including poetry.

5 By submission dated July 8, 2021, the defense requests
6 a sentence of 120 months. Defense counsel notes that a
7 sentence of 120 months is double the amount of time that
8 Mr. Moody has ever served in prison and is more than sufficient
9 but not greater than necessary to reach sentencing goals of
10 Congress in this case.

11 This is all now taken from the defense submission.

12 In its determination of an appropriate sentence
13 defense counsel asks the Court to take into consideration the
14 extraordinarily difficult upbringing that Mr. Moody has had as
15 well as the harsh conditions of confinement that he has endured
16 during, particularly, the COVID pandemic.

17 Defense counsel notes that during his confinement the
18 defendant contracted COVID-19 and defense counsel also notes
19 that defendant fears that he is suffering from a post COVID
20 syndrome.

21 Is everybody vaccinated? Counsel and Mr. Moody I
22 think is as well.

23 MR. RICCO: Mr. Moody has had his first shot. He was
24 supposed to get the second today this morning but he will be
25 getting that shot after court today.

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1 And, your Honor, at the time of the plea and early in
2 the pleadings, he was not vaccinated. We had some dialogue
3 back and forth about it. I shared that with Mr. Moody and he
4 decided to get vaccinated.

5 THE COURT: According to defense counsel, during the
6 pandemic inmates were locked in their cells for periods of
7 nearly the entire 24 hours of the day and there were months in
8 which all recreation, access to the law library and
9 approximately five weeks ago in-person, it wasn't until
10 approximately five weeks ago that in-person social visits were
11 permitted in the facility.

12 Counsel also describes defendant's family
13 circumstances in detail. Some of which I referenced already.
14 Most importantly including the fact that his mother was a
15 16-year-old drug addict when she gave birth to Mr. Moody.

16 Defense counsel notes that both of the defendant's
17 parents were addicted and that the defendant's father was gone
18 from his life at an early age. That is to say Mr. Moody's
19 life.

20 Defense counsel also notes that defendant's
21 grandmother tried to provide a safe, nurturing environment for
22 the defendant to grow up in but these efforts were thwarted by
23 the neighborhoods in which they lived, as well as residing with
24 an abusive step grandfather.

25 Defense counsel acknowledged that the defendant's

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1 prior criminal history and he acknowledges the prior criminal
2 history and describes the heartbreaking incident which it is
3 and which defendant was selling drugs and apparently while his
4 mother was waiting in line to purchase drugs, and according to
5 defense counsel did not recognize Mr. Moody as her son.

6 Counsel states that defendant wants the Court to know
7 that Andrew Moody realizes that he has failed but that he is
8 not a failure. I agree with that. It's evident from the
9 certificates for example and also from the letters of support
10 that were submitted with Mr. Moody's defense submission. And
11 that he has not given up, this is according to defense counsel
12 on the great promise that God has blessed him with Andrew Moody
13 is still searching for ways to find a place himself in the life
14 of his children and in society. Mr. Moody is capable of
15 redemption but he needs help not warehousing in a penitentiary.
16 That's a quote from defense submission.

17 Counsel also states that everyone reports that Andrew
18 Moody is a loving father that is actively involved in the lives
19 of his children, attending PTA meetings, taking an interest in
20 their education and devoting positive time for their
21 nourishment and development.

22 Andrew Moody wants to be a productive member of our
23 society, a father and positive influence in the lives of his
24 children. And defense counsel states Andrew Moody wants a life
25 for himself, his children and if possible his mother who

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1 remains hopelessly addicted to drugs.

2 By submission dated July 12, 2021, defense again
3 requests a sentence of 120 months. And as I noted before, he
4 has submitted letters of support from defendant's significant
5 other, her daughter and the mother of his two sons.

6 And also included in the submissions are photos of
7 Mr. Moody with friends and family, certificates obtained while
8 in the BOP custody and those certificates include all those
9 that I mentioned before.

10 By submission dated July 13, 2021, the government
11 requests that in case number 19 CR 112 the Court imposed a very
12 substantial sentence above the mandatory minimum of ten years
13 but below the stipulated guideline range of 360 months to life
14 imprisonment.

15 And in case number ten CR 1160, the Court imposed
16 consecutive sentence within the applicable guideline range
17 there of 51 to 63 months of imprisonment.

18 It's likely that the supervised release violation and
19 sentence therefore will be consecutive. The supervised release
20 period was the opportunity to get the train going on the right
21 track does not seem to have succeeded, obviously.

22 Were there programs, counsel, during the supervised
23 release period? I'm sure there must have been drug programs
24 and therapy.

25 MR. RICCO: Yes. Mr. Moody participated in a drug

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1 treatment program when he was on supervised release.

2 THE COURT: Was it Court involved in the supervision?

3 MR. RICCO: Yes, sir.

4 THE COURT: The governments argues that a very
5 substantial sentence above the mandatory minimum of ten years
6 imprisonment but as I said, below the applicable stipulated
7 guideline range would appropriately reflect the nature and
8 seriousness of the defendant's conduct, provide a just
9 punishment for the offense and deter others who are similarly
10 situated.

11 The defendant was a leader of -- this is from the
12 government's submission -- was a leader of a significant drug
13 operation in the Bronx. He employed numerous others and sold
14 crack cocaine, heroin and marijuana to long lines of customers
15 nearly 24 hours a day for three years.

16 As reflected in the guidelines calculation, the
17 quantity of drugs sold by the defendant's operation is
18 staggering. The poison -- this is from the government's
19 submission -- the poison held by the defendant caused harm to
20 untold numbers of residents in the Bronx and he should be held
21 accountable for the damage that he inflicted.

22 Furthermore, according to the government, defendant's
23 possession of a firearm carrying out the substantive offense is
24 deeply troubling.

25 Mr. Moody possessed the firearm which was defaced for

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1 the apparent purpose of protecting the drug operation. The
2 firearm underscores simply how dangerous the drug operation was
3 and that the defendant was prepared to use lethal force against
4 those who might challenge him.

5 The government goes on to state, a sentence within the
6 stipulated guideline range would appropriately deter the
7 defendant from engaging in future criminal conduct and protect
8 the public from further crimes. The defendant is in criminal
9 history category six. He has proven himself through his
10 actions to be a dangerous and persistent criminal who is not
11 easily deterred from continuing to engage in serious criminal
12 conduct. Specifically, his criminal history includes at least
13 one shocking and brazen act of violence. This goes back some
14 time to on or about January 6, 2006 at approximately 5:28 a.m.
15 the defendant approached another individual with a loaded
16 handgun and shot him three times. Since that time, defendant
17 has had two federal arrests during which he was found to be in
18 possession of a loaded operable firearm. Once on September 15,
19 2010 and once on June 22 on 2018.

20 In light of the shooting defendant committed in 2006,
21 it is not difficult to predict according to the government the
22 terrible violence that the defendant was capable of doing to
23 others with firearms. It is plain that no arrests, conviction
24 or sentence has deterred him from committing serious crimes
25 during the past 15 years of an escalating pattern of crime and

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1 the defendant has proven himself through his actions according
2 to the government to be a dangerous person from whom the public
3 needs to be protected.

4 Now, the supervised release violation is again 10 CR
5 1160. Under 18 U.S.C. Section 3553(A) (3) (e), the Court may
6 after considering the factors set forth in Section 3553(A) (1)
7 (A) (2) (B) (A) (2) (C) (A) (2) (D) (A) (4) (A) (5) (A) (6) and
8 (A) (7) terminate the term of supervised release, extend the
9 term of supervised release or revoke the term of supervised
10 release.

11 The factors set forth in Section 3553 (A) (1) (A) (2)
12 (B) (A) (2) (C) (A) (2) (D) (A) (4) (A) (5) (A) (6) and (A)
13 (7), include consideration for the nature and the circumstances
14 of the offense, the history and characteristics of Mr. Moody,
15 the need for the sentence imposed to afford an adequate
16 deterrence to criminal conduct, to protect the public from
17 further crimes, to provide the defendant with needed
18 educational or vocational training, medical care or other
19 correctional treatment in the most effective manner. And we
20 look at the kinds of sentence and the sentencing range
21 established in the sentencing guidelines even though those are
22 no longer mandatory.

23 And with respect to supervised release violations
24 those were always advisory. The policy statements issued by
25 the sentencing commission, the need to avoid unwarranted

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1 sentence disparities among similarly situated defendants and in
2 appropriate cases, the need to provide for restitution.

3 The Court has to determine that the applicable policy
4 guideline range for the violation specification is 51 to 63
5 months. And the Court notes also that there's a statutory
6 maximum term of imprisonment of five years.

7 After considering the guidelines and all the other
8 factors in 18 U.S.C. 3583 (E), the Court incorporates its prior
9 discussion by reference and notes the following additional
10 information:

11 And incidentally, it is my intention to revoke the
12 current supervised release term but to apply a new supervised
13 release term at the end of the period of incarceration.

14 I am a big believe in supervised release. It's
15 appropriate to be heartbroken that it was not more successful
16 in this last go round for Mr. Moody, and I've seen a lot of
17 cases where it has succeeded and so I am not giving up on
18 Mr. Moody by any means. And I am going to include a term of
19 supervision again after incarceration.

20 According to the presentence report Mr. Moody's
21 adjustment to supervision was deemed poor in that he tested
22 positive for cocaine several times. He failed to comply with
23 the probation office's random urine testing program. He
24 attempted to evade drug testing by possessing a Whizzinator
25 device and he sustained several re-arrests including state drug

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1 and larceny offenses and the instant federal drug offense.

2 Mr. Moody worked sporadically in the kitchen at a
3 seafood restaurant. Although he completed an outpatient drug
4 treatment program in June 2016 he relapsed on cocaine and was
5 subsequently referred to intensive outpatient treatment in
6 April of 2017. He was rearrested before completing treatment.

7 Probation recommends that consecutive sentences be
8 imposed, one for supervised release violation and another for
9 the conspiracy with respect to under lawful drugs.

10 Probation states Mr. Moody has been dealing drugs
11 since he was a teenager. As evident by the instant conviction
12 Mr. Moody's criminal activity has substantially escalated. His
13 conduct in this case is serious because he was the leader of a
14 crew for about three years distributing large amounts of hard
15 drugs, made a substantial amount of money and possessed
16 firearms to protect his drug business.

17 Furthermore, it's apparent that he has -- this is
18 according to probation -- no respect for the law, the Court and
19 the probation office as he brazenly ran his drug operation
20 while he was on supervised release.

21 As I previously mentioned, the government requests
22 consecutive sentence with respect to the applicable guidelines
23 range of 51 to 63 months imprisonment on the violation of
24 supervised release.

25 The government argues the defendant has repeatedly and

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1 consistently violated the trust placed on him while on Court
2 imposed supervision. And most importantly, the government
3 contends that the defendant committed the conduct at issue in
4 Count One of the indictment 19 CR 112 while on supervised
5 release in 10 CR 1160, and even before his June 22nd arrest he
6 was had tested positive for cocaine several times, failed to
7 comply with the probation office's random urine collection
8 program and attempted to evade drug testing.

9 He sustained several rearrests including state drug
10 and larceny charges.

11 I've also, as I said, carefully reviewed the
12 presentence investigation report prepared on December 27, 2019,
13 together with the addendum and sentencing recommendation
14 approved on January 17, 2020. I also received correspondence
15 dated July 8, 2021 and July 12, 2021, from counsel Anthony
16 Ricco and dated July 13, 2021, from AUSA Sobelman.

17 I would ask at this time, defense counsel and
18 Mr. Moody, if they had an opportunity to read and discuss the
19 presentence investigation report along with the addendum and
20 sentencing recommendation therewith?

21 MR. RICCO: Yes, your Honor.

22 THE COURT: Mr. Moody, you have been over that
23 presentence report with counsel?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do either of you have any further

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1 objections to the contents of the report that you want to
2 mention at this time?

3 MR. RICCO: None other than set forth in the
4 submission.

5 THE COURT: Mr. Moody, any further objections from
6 you?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: How about from the government?

9 MR. SOBELMAN: No, your Honor.

10 THE COURT: I will return the presentence report
11 probation which is our practice and at this time I am ready to
12 hear, and take whatever time you need for defense counsel,
13 Mr. Moody and the government in that order to make any oral
14 presentation they might want. I'll start with Mr. Ricco.

15 MR. RICCO: Yes. Good morning, your Honor.

16 One thing very apparent to me is that your Honor took
17 great care and read the submissions that were filed on behalf
18 of the defendant.

19 THE COURT: I try to do that all the time but here
20 most especially since the guideline range in both offenses were
21 so high I wanted to make sure that I didn't miss anything
22 because 360 months to life, 51 to 63 months on the violation is
23 a serious business. So, I did read everything. I'm sorry.

24 MR. RICCO: No. That's fine, your Honor.

25 Actually, your Honor, that was the basis of why the

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1 written submission was in the detail that it was.

2 I would like to start with an observation if I can,
3 your Honor. I've been practicing here in federal courts coming
4 up almost on some four decades. It's been 35 plus four years.
5 And my work is both noncapital and capital work. Over the
6 course of my career I have represented people in the Criminal
7 Justice Act in a variety cases, international terrorists to
8 death penalty cases to verdict. I've represented individuals
9 on death row and I've represented defendants before our courts
10 and every variety of noncapital federal cases. I have had an
11 opportunity to interact with thousands of defendants over the
12 course of my career.

13 My written submission says that my interactions with
14 Andrew Moody, I found him to be one of the most remarkable
15 young men that I've met in my time as a lawyer practicing law
16 here. I don't say that lightly. My initial meeting with
17 Andrew Moody is memorialized in my written submission. At the
18 time he was telling me about that encounter that he had with
19 his mother was not as a part of any strategy or anything like
20 that. It was a discussion about who he was. Who are your
21 parents? Where are they? Who is your family? That
22 circumstance struck me very deeply.

23 Over the course of representing Andrew Moody I have
24 had to interview several of his aunts, several of the women
25 that he's dealt with in his life. And from those interviews

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1 emerged a profile of a human being beyond the charges. I could
2 sit here for the next hour and talk about Andrew Moody's
3 criminal history and then when I finish having that
4 conversation here is the question. Why? When you meet Andrew
5 Moody and you have an opportunity to interact with him and you
6 see the consistency between everyone, it's a very deeply
7 troubling situation that here is a boy, young boy born into
8 this world from drug addicted parents, born with drugs in his
9 system who one day ends up selling drugs to his mother, who
10 doesn't recognize him. Mr. Moody and I have had the
11 opportunity to talk about just the powerful significance of
12 that.

13 Andrew Moody, judge, I found was a young person. He's
14 not a person that willfully would violate trusts. He's not a
15 brazen anything. I found him to be a survivor of our society
16 and of his circumstance but that's it. He's not a hero. He's
17 not an achiever. He survived. Andrew Moody is not a person
18 who had -- everything starts with our parents. Parents teach
19 us our legacy. Parents inspire us for the future. Without
20 parenting, there's no legacy. Without a legacy, there's no
21 progress.

22 Andrew Moody never had a person who went over homework
23 with him. He never had a person who gave him guidance or gave
24 him an inspiration for the future. No person ever told him
25 when he was a child that he was smart. No person ever told him

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1 how to dream for a future. And above all, nobody ever told him
2 that they loved him. The most important experience that a
3 child has with a parent, or if they're fortunate, a grandparent
4 and grandparents. Nobody ever cried for Andrew Moody. I
5 learned that from my discussions with his aunt. And that as a
6 boy he suffered and wondered where his parents were and why he
7 never saw them.

8 This lack of essential life defining experiences was
9 missing from Andrew in his formative years. A child growing
10 up -- well, I will say this, judge. What's worse about the
11 fact that these very important essential life experiences are
12 missing from the life of the child is the environment in which
13 the child was living. And so Andrew Moody missed these very
14 important life essential experiences not growing up in the
15 suburbs or communities lined with single homes or white picket
16 fences. No. He suffered from these lack of life defining
17 experiences, a child growing up in some of the worst forgotten
18 communities in our country, communities then that any person
19 with money or access and who loves their children run to get
20 away from, and make sure that they slam the door behind them.

21 My experience here has been, there's a pattern of the
22 destruction and derailment of the lives of children that we see
23 in these courts every single day. The narrative though is that
24 they're brazen. They have no respect for the law. They can't
25 trust anyone. And this becomes the narrative upon which these

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1 staggering prison sentences are handed down.

2 The circumstances of Andrew's life -- and when I was
3 in law school there was a very famous professor named Alan
4 Dershowitz. And back in 1994 he coined a phrase and wrote a
5 book called "The Abuse Excuse". And it's interesting that that
6 book came out around the same time as the 1994 Crime Act. And
7 in this book Alan Dershowitz said, when you find young people
8 like Andrew Moody, punish them and punish them severely, that
9 all of this talk about what happened to them as children, all
10 of the protections and love and guidance that we give to our
11 own kids, don't pay attention to the fact that Andrew Moody
12 never got that. That's an excuse. And the great Harvard
13 professor then was a cheerleader for a phenomenon later known
14 to us as "mass incarceration", just a warehousing of people
15 well beyond the necessary goals of Congress.

16 Andrew Moody has trust. He just has to learn how to
17 apply it. I know he has trust, judge, because he put his trust
18 in his lawyer. He signed a plea agreement, judge, that said he
19 could get 360 years to life consecutive with the violations of
20 supervised release. And he signed that plea agreement because,
21 one, he wanted to take responsibility for what he had done.
22 But he put faith that someone with would stand up and advocate
23 his cause. To me that's a powerful sign of redemption.
24 Because the person who we would like to say from our vantage
25 point has no trust, has no faith, has no respect for the law,

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1 that's not necessarily accurate. It all depends on how you
2 define that.

3 I find that Andrew Moody as he is sitting here today
4 does have respect for the law. He does have respect for a
5 courtroom. He does have faith now. To some extent he does
6 have faith in our system. He certainly placed his faith in his
7 lawyer to have the system hear him. He knows he has no
8 guaranty.

9 But you know, something happened in those
10 conversations at first the MCC and later the MDC. And I think
11 the thing that happened that Andrew Moody had an opportunity to
12 sit down and talk to a real person about real life, his life
13 and how he got to where he was and is because he is very much
14 aware of his failure. He is very much aware of his situation.
15 It's a situation that he does not want but has to find a
16 pathway away from. It's not an easy task.

17 First and foremost, far too many of the kids who come
18 out of these communities become the victims of it either
19 through criminal activity or death. Once they're in the system
20 it becomes a revolving door. My hope is that Andrew has an
21 opportunity to fulfill his promise as a person.

22 Drug dealing is and drugs is the bane of the
23 existence. I've said it publicly. I say it every chance I
24 get. In 1970 a boy who's long forgotten that no one in this
25 room will remember, died from an overdose of heroin. He was

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1 12-years-old. His name was Walter Vandermere and he died in
2 Harlem, the beginning of the summer at age 12 from drug
3 addiction overdose of heroin. Later that summer a 15-year-old
4 girl died named Marcia Ricco from an overdose of heroin at age
5 15. The bane and the problem of drugs in our society has been
6 overwhelming the lives of children, adults, communities, for 50
7 years or more.

8 I recognize and I think Mr. Moody also recognized that
9 people have to be punished for their crimes. A long time ago
10 ten years was a long time. In fact, when these drug laws were
11 passed during my career, that ten-year plateau was for the
12 kingpins. That's what the congressional record says. It was
13 for the organizers, the leaders. It was a stiff sentence. The
14 thought was that this was a sufficient sentence. But then
15 comes along another generation of people who have a different
16 view and they changed the narrative. Now the ten years is
17 routine. Somehow a person gets a break to do ten years in a
18 penitentiary.

19 I think, judge, that everything the government says
20 about Mr. Moody is pretty much true. But they only know half
21 the story. The Court is supposed to sentence the individual
22 with consideration for his background and character or lack
23 thereof, not just the one-sided equation. It's not like who he
24 is is a footnote to let's get down to the business of what he
25 did. It's all the business of punishment and redemption. And

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Sentence

1 my view with Andrew which has been extended because of the
2 COVID pandemic, has demonstrated to me that he is a person who
3 is very capable of redemption.

4 Your Honor, the courts never see the meetings with the
5 defendants at the jail, but probable both good and bad. But
6 when you're positive the courts never get a chance to see that.
7 I think the courts have to rely upon the integrity of the
8 lawyers to accurately talk about without violating the
9 attorney/client privileges where the defendant is. And I think
10 for Mr. Moody, given everything he sort of demonstrated that he
11 is capable. He is interested. He is smart. He's bright.
12 Judge, he's damaged.

13 I represent a person who is sentenced to 20 years in
14 this courthouse, served a sentence, got out, was back involved
15 with drugs and was back here. Again, the same lawyer,
16 different judge, same courthouse. And what we found out is
17 that although he had served the 17 and a half years on a
18 20-year sentence had taken a lot of programs, that something
19 had happened to him when he was a child that had never been
20 addressed. And what we found out the second time around is
21 that it continued to plague him and influence him and caused
22 him to get back into the use of drugs and slip into the drug
23 world, another defendant who was facing this extraordinary
24 guidelines levels because of the regiment of the sentencing
25 guidelines.

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1 So, judge, many of the people in the courtroom today,
2 they're all family or friends of Andrew. I think one of his
3 aunts is present in the courtroom, and they have seen him since
4 he was a child. He's always got the back hand from society.
5 He didn't get the back hand from Anthony Ricco and he didn't
6 get the proforma representation, no. What he got was an
7 opportunity to express himself, to learn about himself, to take
8 responsibility for what he did.

9 And I recognize that we all play different roles here
10 in these proceedings. I do have appreciation for the
11 government in this case who is open to some of these
12 conversations. Obviously, the prosecutors -- and they speak
13 for themselves -- but some of these conversations I've had with
14 the government, they have a different view to these issues, but
15 they have a different view.

16 The government, this case was not going to trial,
17 judge. There's volumes of videotape. You know this case would
18 have never gone to trial. If Andrew Moody was required to
19 plead to Count One and Two there's a mandatory minimum of 15
20 years, could have been 15 years. He certainly faced a far more
21 different situation. But you know, I think that the parties
22 reached an agreement because both sides get an opportunity to
23 argue while at the same time have a baseline from where people
24 want to start or end their argument. So, I am grateful for
25 that opportunity. In some cases it's not provided.

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1 So, judge, I have said everything that I wanted to say
2 to the Court. I did not want to repeat the submission. I
3 think I might have done that a little bit. Forgive me for
4 that.

5 But I would say Andrew has a spirit about him that's
6 unbelievable. And that spirit like his ancestors endures and
7 is present. Even though he has been through so much, he still
8 is able to rebound. We punish him because of guns. We punish
9 him for what he's done. But the guidelines place no value on
10 his love for his children, his nuanced life, his personality.
11 It's interesting to try to think about where that spirit comes
12 from. We know where the failure comes from, where his rage
13 comes from. But where does that strong spirit that he has come
14 from? And does that spirit have any value? It doesn't to the
15 sentencing commission, but it does under 3553(a).

16 And so, I did point out, judge, that even at 120
17 months Andrew Moody would be serving twice the prison time that
18 he has ever served in his life, double the prison time. That's
19 a significant factor. And we're not saying double the time,
20 one year to two years. You're talking about the difference
21 between five years and ten years. And, judge, he is -- I don't
22 know if I mentioned this. He is 37 now. He is 37 today.
23 Today is his birthday.

24 I would just end by saying this, judge. One time a
25 great person talked about the laws of unintended consequences.

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1 And one of the unintended consequences of Andrew Moody's arrest
2 in this pandemic is that he has had an opportunity for
3 reflection and he has had an opportunity to demonstrate that he
4 is very interested in his future. And he has done that.

5 So, in many ways his arrest has helped sort of get the
6 ship right. Get in the right direction. In order for him to
7 continue in that direction he is going to need help, just like
8 most of the defendants that come in. And in the absence of
9 that, judge, chances are he'll be back. Hopefully, not. But
10 holding everyone accountable is very important and taking
11 account of where people are and how they got there is a part of
12 accountability and helps us to understand who we see and what
13 needs to be done. So, I know that the Court will take all of
14 that into consideration.

15 Thank you very much.

16 THE COURT: Mr. Moody, I'm happy to hear from you.

17 THE DEFENDANT: Yes, your Honor. I would like to say
18 I wrote down a few things to express the best way I can. I
19 would like to say that I take full responsibility for my
20 actions and I want to express how remorseful I am.

21 I would like to say to the best of my ability of my
22 sincere regret and sorrow knowing that my actions have caused
23 so much hurt and pain, as well as my commitment to change. I
24 am a different man now, your Honor, and this will never happen
25 again. I am truly sorry for what I've done.

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1 Through my incarceration of these last several years I
2 have tried to apprehend the consequences of my actions. And in
3 the beginning I thought I could understand the full extent of
4 the pain and suffering I have caused. I've learned through my
5 participation of my rehabilitation programs that it is
6 difficult to fully comprehend the pain that I've inflicted. I
7 am learning to process these emotions and package them
8 constructively to evolve into a better person.

9 Your Honor, I turn 37 today and I'm scared. I am
10 scared for my family, Priscilla Davis, my fiancée, our children.
11 I'm scared that our children will grow up without their father
12 and the same cycle of difficulty that I grew up with will
13 repeat itself in a vicious cycle. I am scared for myself of
14 the time that I face without my family and what I have to
15 continue to endure.

16 Your Honor, I have spent much time doing this
17 defending, reflecting on my life and my commitment to change.
18 As you know, 2020 and 2021 were very hard years because of
19 COVID-19 that forced MCC and MDC into near constant lockdowns.
20 But this time gave me the opportunity to put words to paper.
21 It began to really think critically about the man I want to
22 become.

23 I ask that you believe that I am and continue to be a
24 changed man and I ask you and the victims to forgive me.
25 Please consider my sincere apologies and thank you for allowing

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1 me to address you today.

2 I ask for the Court's mercy.

3 THE COURT: Thank you.

4 Counsel for the government.

5 MR. SOBELMAN: Your Honor, Mr. Ricco and Mr. Moody
6 were both eloquent today and even moving. But the reality is
7 that Mr. Moody's actions speak louder than his words today or
8 than Mr. Ricco's words today. His actions betray the Court's
9 trust. His actions violated some of the most serious laws we
10 have. His actions harmed an entire community, dozens, if not
11 hundreds of untold damage done to these individuals, their
12 families. We don't know what happened to each of them as a
13 result of the use of the enormous quantity of drugs the
14 defendant sold. But what we do know is that he didn't help
15 make their lives any better and all he did was enrich himself.

16 We don't disagree with Mr. Ricco that Mr. Moody is
17 some type of survivor who has persevered through difficult
18 circumstances. That much is not in dispute. But he had
19 multiple opportunities at legitimate employment, employment
20 that would have given him a working wage that he could have
21 lived on, but that's not what he chose to do. He built his own
22 empire while on supervised release right after getting out of
23 prison for possessing a firearm in furtherance of drug
24 trafficking, the same exact behavior that he started up just
25 after being released from prison. It's not as if he had years

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1 of successful transition that some relapse triggered resorting
2 to his prior behavior. That's just not how it happened here.

3 The Court and defense counsel both made reference to
4 this being a particularly high-stakes sentencing in that the
5 time that the defendant faces is substantial. We don't
6 disagree with that. The one thing I would add is this is also
7 a high-stakes sentencing for the government and the public.

8 The defendant is someone who has shot someone before.
9 After that he possessed a firearm in furtherance of drug
10 trafficking. After that, he possessed a firearm in furtherance
11 of drug trafficking. There is a real risk of danger to the
12 communities from this defendant. The government is as hopeful
13 as anyone that he turns his life around but he has so far shown
14 an inability to do that even after receiving a five-year
15 federal prison sentence.

16 The phenomenon of mass incarceration is something that
17 I think is not appropriate for us to try to take on in the
18 context of a sentencing of an individual defendant. What I'll
19 note is this. The writings and scholarship around that issue
20 focus on defendants who are not like this defendant, not
21 defendants who are facing their fifth felony conviction, not
22 defendants who are indisputably violent, not defendants who
23 repeatedly possess firearms and contrary to federal law. It's
24 a phenomenon that largely describes nonviolent individuals for
25 minor charges. These are not minor charges.

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1 Mr. Ricco at one point referenced well, the ten year
2 mandatory minimum is really supposed to be for organizers and
3 leaders. That's what Mr. Moody is. Was he a leader of a
4 Mexican drug cartel? Of course not. He had his own mom and
5 pop cartel in the Bronx. Had he a building he ran it out of on
6 multiple floors, people working in shifts 24 hours a day for
7 years. He was organized. He had letters. He had prices
8 posted on whiteboards on the wall. He had certain people that
9 focused on cooking the drugs, certain people that focused on
10 packing the drugs, certain people that did the retail
11 transactions to the drug customers who were lined up down the
12 block. This is a person for whom a ten-year mandatory minimum
13 is appropriate. And in the government's view, more than that
14 is appropriate here. We of course agree with the defense that
15 the guidelines here are higher than is necessary under the
16 purposes of sentencing. We're not asking for 30 years. We're
17 not asking for life imprisonment. That is too high. But ten
18 years is also too low.

19 Mr. Ricco did err on one point because had the
20 defendant gone to trial and lost, he would have been facing a
21 35-year mandatory minimum, not 15, because it would have been
22 his second 924(c) conviction which would have carried a 25-year
23 consecutive of mandatory minimum. Pleading in the fashion that
24 he did, while appropriate and shows acceptance of
25 responsibility, the government does not view it as an act of

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1 redemption. It was an act of self interest. He was offered
2 the opportunity to have a ten-year mandatory minimum instead of
3 a 35-year mandatory minimum, which again, the government's view
4 of 35 for this defendant in these circumstances is too much,
5 but ten also is too little.

6 With respect to the violation of supervised release,
7 the government does think that it's important that whatever
8 amount your Honor decides is appropriate and the government
9 suggests the 51 to 60 months is appropriate, but whatever
10 amount your Honor decides is appropriate be imposed
11 consecutively. And it's really both a matter of principle but
12 also a practical term.

13 As a matter of principle it is a different offense.
14 There's case law that we cite in our letter and also policy
15 statements by the sentencing guidelines sentencing commission
16 that discuss how that punishment is a breach of trust to the
17 Court. The Court can take into account the underlying offense
18 but by exiting prison and entering on supervised release and
19 immediately returning to the exact same type criminal conduct
20 he did before and in fact escalating that conduct to run his
21 own drug business requires separate punishment as a matter of
22 principle.

23 But as a practical matter at some point this defendant
24 is going to be released again. It might be ten years from now.
25 It might be 20 years from now. Your Honor's about to decide

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Sentence

1 that. But whenever it is, he needs to remember that violating
2 supervised release carries a penalty. It's not just that he
3 can be arrested for a new crime, prosecuted for a new crime.
4 That may happen also. But supervised release in a way is
5 sacred. It is a somewhat clean slate where you are given
6 resources. You have someone watching over your shoulder to try
7 to set you on the right path. And the government is deeply
8 concerned that if the message wasn't set last time, it has to
9 be set more loudly and more clearly this time because
10 eventually when Mr. Moody is released it is critical that he
11 stays on the right path.

12 THE COURT: I think I mentioned before that I was
13 likely to impose consecutive sentences. There's one other
14 aspect and that is that supervised release is really all the
15 Court knows about how to be of help and how to help someone
16 reintegrate into the community and into society. And that was
17 the opportunity as far as I can see here and in many other
18 situations.

19 Many defendants do take advantage of supervised
20 release. I'm not saying, that's not a criticism in the sense
21 that, people do what they've got to do. But that not,
22 recognizing the assistant is correct that that is the
23 opportunity to perhaps break through old patterns and help
24 begin to resolve old injury. And he is right. I mean
25 supervision frankly is the most significant part of a sentence

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Sentence

1 in many respects. I'm sorry that you were not able to take
2 advantage of the last round of supervised release. I am not
3 judging you with respect to that. That's just the fact and I
4 think it's just unfortunate that it didn't happen. I'm sorry.

5 MR. SOBELMAN: Your Honor, that actually concludes my
6 comments. Of course, if the Court has questions, I am happy to
7 answer them.

8 Thank you.

9 THE COURT: Thank you.

10 I'll tell you this also. I accept as genuine
11 everybody's comments, Mr. Moody's, Mr. Ricco, as well as the
12 government. I think what everybody said was sincere, earnest
13 and appropriate. The question for the Court is what do you do
14 with these contradictory positions?

15 So, I am going to adopt the findings of fact in the
16 presentence report unless defense counsel has any further
17 objections.

18 MR. RICCO: No further objections.

19 THE COURT: Or Mr. Moody.

20 THE DEFENDANT: None, your Honor.

21 THE COURT: Or the government.

22 MR. SOBELMAN: None, your Honor.

23 THE COURT: All right. So now I am going to impose
24 the sentence. It's a significant sentence I have to say and
25 then I will actually impose it. First, I am going to preview

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1 what it's going to be.

2 With respect to the substantive crime, the substantive
3 count, the conspiracy, the drug conspiracy, I intend to impose
4 a term of custody at 180 months of incarceration. The
5 guideline range, as I said before, for that crime is 360 months
6 to life because the offense level is 39 and the criminal
7 history category is six. So that is actually 180 months less
8 than the guideline range, lower range.

9 And then with respect to the violation of supervised
10 release and docket 10 CR 1160, imposing a further sentence of
11 50 months of incarceration consecutive to the 180 months for
12 the drug conspiracy. The policy range with respect to the
13 violation of supervision is 51 to 63 months. And the sentence
14 of 50 months is just somewhat lower than the low end of that
15 range. Substantially, it's the same as the 50, is similar to
16 the 51 month lower range of the violation.

17 I also intend to reimpose a new sentence of supervised
18 release having revoked the current sentence. I intend to
19 impose a term of supervision of five years and that is to
20 follow imprisonment for both dockets. Those five year
21 supervised release for each of the drug conspiracy and for the
22 supervision violations to run concurrently. So, one five-year
23 term of supervision. They include these conditions:

24 They include -- the supervision does. The five years
25 of supervision includes the following mandatory conditions that

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Sentence

1 Mr. Moody may not, should not commit another federal state or
2 local crime;

3 That he not illegally possess a controlled substance;

4 That he refrain from any unlawful use of controlled
5 substance;

6 That he be required to submit to one drug test within
7 15 days of placement on supervised release and at least two
8 unscheduled drug tests thereafter as may be directed by the
9 probation officer.

10 In addition, he is required to comply with what are
11 called the standard conditions one through 12. And those
12 include by the way that Mr. Moody must not, shall not own,
13 possess or have access to a firearm, ammunition, destructive
14 device or dangerous weapon, anything that was designed or was
15 modified for the specific purpose of causing bodily injury or
16 death to any person.

17 And then in addition, I am imposing these special
18 conditions which the Court finds are reasonably related to the
19 factors set forth in the 18 U.S.C. Section 3553(A) (is) (A) (2)
20 (B) (A) (2) (C) and (A) (2) (D), and which the Court further
21 finds involve no greater deprivation of liberty and is
22 reasonably necessary for the purposes set forth in Section
23 3553(A) (2) (B) (A) (2) (C) and (A) (2) (D) and that these
24 conditions are consistent with pertinent policy statements
25 issued by the United States Sentencing Commission under 28

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Sentence

1 U.S.C. Section 994(A).

2 Mr. Moody is to be supervised in his district of
3 residence. He is required to report to probation within four
4 hours of his release from custody. Throughout the term of his
5 supervision, the five-year term, he is required to participate
6 in a program approved by the probation office for substance
7 abuse. That program shall include testing to determine whether
8 he has reverted to use of drugs or alcohol. The offender may
9 be required to contribute to the cost of services rendered as
10 by a co-payment in an amount to be determined by the probation
11 officer based on such factors as ability to pay or availability
12 of third party payment.

13 In addition, throughout the term of supervised release
14 Mr. Moody is required to participate in weekly therapeutic
15 counseling, both individual and group, once per week at least
16 for each. To say at least one individual session and one group
17 session therapeutic counseling per week and administered by a
18 licensed therapist.

19 There's also a search condition attached.

20 Mr. Moody shall submit his person, any property,
21 residence, vehicle, papers, computer or other electronic
22 communication data, storage devices, cloud storage for media
23 and effects to any search by a United States probation officer
24 and if needed with the assistance of law enforcement. The
25 search is to be conducted when there is reasonable suspicion

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1 concerning a violation of the conditions of supervision or
2 unlawful conduct by the person being supervised. Failure to
3 submit to a search may be grounds for revocation of supervised
4 release.

5 Mr. Moody is required to warn any other occupants of
6 the premises that may be subject to searches pursuant to this
7 condition. any search shall be conducted in a reasonable and
8 at a unreasonable time and in a reasonable manner.

9 I don't intend to impose a fine. I don't intend to
10 impose restitution. I do intend to impose a \$100 special
11 assessment which is mandatory for the substantive conspiracy
12 matter 18 U.S.C. 3013. There's a requirement that the special
13 assessment be mandatory.

14 Briefly, my reasons for the sentence are these:

15 First, I intend as I said before to impose a 180-month
16 sentence on 19 CR 112 and a 50-month sentence on 10 CR 1160.

17 With respect to 19 CR 112 the offense level is 39.
18 The criminal history category is six and the guideline range is
19 36 months to life. The sentence I imposed there is 180 months
20 which is half the lowest end of the guidelines range. As I
21 said before, I also intend to impose a sentence of 50 months to
22 run consecutive for the violation of supervised release. It is
23 my belief that the opportunity for assistance and help comes in
24 supervised release.

25 The specification in this case is a Grade A

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Sentence

1 specification and the policy guideline range of imprisonment is
2 51 to 63 months of imprisonment.

3 I believe this sentence is appropriate first given the
4 seriousness, the very seriousness of both offenses, both the
5 drug conspiracy and violation of supervision, and the need for
6 deterrence hopefully, specific and general deterrence and the
7 need for punishment.

8 I do recognize that there are other factors, a very
9 positive nature with respect to Mr. Moody as we discussed
10 earlier.

11 I've considered the nature and the circumstances of
12 the crime. It is, as I say, very serious and poses a danger to
13 the community. It's obvious.

14 I've also considered the history and characteristics
15 of Mr. Moody with some care. I understand the background. I
16 understand perhaps even Mr. Moody. I hope I do. And I believe
17 that the sentence imposed reflects the seriousness of the
18 offense, two of them. It promotes respect for the law. It
19 provides a just punishment. It affords I think adequate
20 deterrence and criminal conduct. It protects the public from
21 further crimes and it provides Mr. Moody with the opportunity
22 for educational and vocational training, medical care and other
23 correctional treatment, most particularly, individual and group
24 therapy and drug treatment.

25 So, before I actually impose the sentence, I am happy

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Sentence

1 to hear briefly from defense counsel once again, from Mr. Moody
2 and from the government if they want to add anything to what's
3 already been said.

4 Mr. Ricco, anything further?

5 MR. RICCO: No, your Honor.

6 THE COURT: Mr. Moody?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: How about the government?

9 MR. SOBELMAN: No, your Honor.

10 THE COURT: Okay. I am going to impose on you
11 Mr. Moody to stand and I will state the sentence.

12 The guideline range for drug conspiracy is 360 months
13 to life. Under 19 CR 112 and the advisory policy range is for
14 the supervised release violation is 51 to 63 months under 10 CR
15 1160. Having considered the Sentencing Reform Act of 1984 and
16 United States Sentencing Guidelines and the factors at 18
17 U.S.C. 3553(a), it is my judgment that Andrew Moody be
18 committed to the custody of the Bureau of Prisons to be
19 imprisoned for a term of 180 months on docket 19 CR 112 and 50
20 months on docket 10 CR 1160, to run consecutively.

21 Upon release from incarceration, the defendant shall
22 be placed on a new term of supervised release for five years on
23 each docket to run concurrently. And those conditions, namely,
24 the mandatory, the standard and special conditions are those
25 that I mentioned for and incorporate here by reference.

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Sentence

1 No fine. No restitution. A \$100 special assessment
2 which is mandatory and due immediately.

3 As for my reasons for the sentence, I have sentenced
4 below the guideline range with respect to the drug conspiracy,
5 substantially below, and somewhat below with respect to the
6 violation of supervision. I think that the sentence is
7 appropriate for the reasons I've mentioned already and I
8 incorporated that entire discussion throughout today's
9 proceeding here by reference. It is largely driven by the
10 seriousness of the offense and the needs for punishment and
11 deterrence and that's just a summary. I am incorporating as I
12 say all of the remarks pertaining to the factors that one
13 considers.

14 Does either counsel know of any legal reason why the
15 sentence should not be imposed as so stated, starting with
16 defense counsel?

17 MR. RICCO: No, your Honor, I do not.

18 THE COURT: How about the government?

19 MR. SOBELMAN: No, your Honor.

20 THE COURT: I hereby order that the sentence be
21 imposed as so stated.

22 Mr. Moody, to the extent you have not already waived
23 your appeal rights pursuant to the plea agreement dated
24 July 29, 2019, and here by the way, there are in the plea
25 agreement waivers of the right to appeal the plea agreement

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1 dated July 29, 2019 and signed October 29, 2019, under those
2 agreements Mr. Moody has waived his right to file a direct
3 appeal and he's waived the right to bring a collateral
4 challenge -- that's on the two dockets -- including but not
5 limited to an application under 28 U.S.C. Sections 2241 and
6 2255 any sentence that is within or below the stipulated
7 guideline range of 360 months to life imprisonment pursuant to
8 the plea agreement.

9 Mr. Moody has also agreed not no appeal any forfeiture
10 in the amount equal to or less than \$100,000. And I point out
11 there is no plea agreement with regard to 10 CR 1160, the
12 violation of supervised release.

13 To the extent, returning to the drug conspiracy, if
14 there are any rights that apply that I have not thought of or
15 not mentioned because I have not thought of any that are
16 apparent, if there are such rights, then I advise you that you
17 have the right to appeal such rights and for leave to appeal in
18 forma pauperis. And if you were to request, the clerk of court
19 will prepare a notice of appeal on your behalf immediately.

20 That I think is it pretty much for today. Are there
21 any open counts that the government was seeking to resolve at
22 this time?

23 MR. SOBELMAN: Yes, your Honor. The government moves
24 to dismiss all open counts.

25 THE COURT: That's true of both the substantive drug

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Sentence

1 conspiracy and the violation of specifications.

2 MR. SOBELMAN: Yes, your Honor.

3 THE COURT: Okay. I grant that application.

4 And finally, starting with defense counsel, if you
5 wish to add anything to today's proceeding?

6 MR. RICCO: No, your Honor, I do not.

7 THE COURT: How about the government?

8 MR. SOBELMAN: No, your Honor.

9 THE COURT: All right. Well, as I said at the outset,
10 it's a sad day for the reasons that we've all discussed.
11 There's nothing left for me to say except, I wish you the best
12 of luck going forward, Mr. Moody. I really mean that.

13 Counsel, were there any recommendations as to facility
14 in terms of geography or do you want to leave that up to the
15 Bureau of Prisons?

16 MR. RICCO: Your Honor, I do have two requests. One,
17 that the defendant be housed in the metropolitan area so he can
18 try to maintain relationship with his children.

19 THE COURT: I'll grant that request and make that
20 recommendation.

21 MR. RICCO: The other, your Honor, if Mr. Moody would
22 like to participate in the Bureau of Prisons Challenge Program
23 if he is eligible for it. So, we would ask that the Court make
24 the recommendation that if he is eligible that he is allowed to
25 participate in the Bureau of Prisons, it's called the Challenge

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1 Program.

2 THE COURT: Yep. I'll make that recommendation as
3 well unless anybody has any objection. No.

4 MR. RICCO: Thank you.

5 THE COURT: I should note that we have a
6 representative from the probation department here and anything
7 that you wish to add that we did not cover.

8 PROBATION OFFICER: No, your Honor.

9 THE COURT: All right. Then that concludes our work
10 for today.

11 And I sincerely mean it, Mr. Moody. I wish you the
12 best of luck going forward.

13 (Adjourned)

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